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March 1, 2007

VIA ELECTRONIC FILING

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: RM-11358: *In the Matter of the Petition of XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops; In the Matter of Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*

Dear Ms. Dortch:

CBB Carrier Services, Inc., Expedient Carrier Services, LLC, Image Access, Inc. d/b/a NewPhone, Line Systems, Inc., LS Networks, RazorLine, LLC and SNiP LiNK LLC, through counsel, hereby submit their initial Comments in the above-referenced proceeding. Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions, or require further information.

Respectfully submitted,


Brett Heather Freedson

cc (via email): Michelle Carey
Scott Deutchman
Scott Bergmann
Ian Dillner
John Hunter
Christi Shewman
Adam Kirschenbaum

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the)	
)	
Petition of XO Communications, LLC,)	
Covad Communications Group, Inc., NuVox)	
Communications and Eschelon Telecom, Inc.)	RM-11358 (consolidated)
for a Rulemaking to Amend Certain Part 51)	
Rules Applicable to Incumbent LEC)	
Retirement of Copper Loops and Copper)	
Subloops)	
)	
In the Matter of Policies and Rules)	
Governing Retirement of Copper Loops by)	
Incumbent Local Exchange Carriers)	

INITIAL COMMENTS IN SUPPORT OF PETITIONS FOR RULEMAKING

CBB Carrier Services, Inc., Expedient Carrier Services, LLC, Image Access, Inc. d/b/a NewPhone, Line Systems, Inc., LS Networks, RazorLine, LLC and SNiP LiNK LLC (together, the “Joint Commenters”), through counsel and pursuant to the Public Notice of the Federal Communications Commission (the “Commission”),¹ submit these Initial Comments in support of the above-captioned Petitions requesting a formal rulemaking proceeding to amend certain provisions of the Part 51 rules applicable to retirement of copper loops and copper subloops by the incumbent local exchange carriers

¹ *In the Matter of the Petition of XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops; In the Matter of Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358, Public Notice: Pleading Cycle Established for Comments on Petitions for Rulemaking and Clarification Regarding the Commission’s Rules Applicable to Retirement of Copper Loops and Copper Subloops, DA 07-209 (rel. Jan. 30, 2007).

(“LECs”).² Specifically, the Joint Commenters propose that the Commission immediately: (1) grant the Petitions; (2) issue a Notice of Proposed Rulemaking, adopting as tentative conclusions the changes to the existing Part 51 rules proposed in the XO Petition; and (3) expeditiously complete a public rulemaking proceeding to amend certain provisions of the Part 51 rules applicable to retirement of copper loops and copper subloops by the incumbent LECs, in the manner recommended in the XO Petition.³

I. THE COMMISSION MUST IMMEDIATELY ACT ON THE PETITIONS TO PREVENT IRREPARABLE PUBLIC INTEREST HARMS

The Petitions filed in the above-captioned proceeding underscore that the existing Part 51 rules applicable to copper loop and copper subloop retirements do not contemplate that unilateral network modifications by the incumbent LECs may harm the public interest. As the Commission previously recognized, incumbent LEC retirements effectively remove from service legacy copper facilities that competitive LECs otherwise may use to offer competing telecommunications services, including broadband, through technological innovation.⁴ Importantly, such retirements also destroy reliable and redundant communications networks that may prove essential during, and immediately

² See Petition of XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops (filed Jan. 18, 2007) (the “XO Petition”); Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers, BridgeCom International *et al.*, Petition for Rulemaking and Clarification (filed Jan. 18, 2007) (together, the “Petitions”).

³ See XO Petition, Exhibit A.

⁴ In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147), Report and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) (the “*Triennial Review Order*”).

following public safety emergencies, including homeland security crises and natural disasters. The need for active and effective Commission oversight of copper loop and copper subloop retirements by the incumbent LECs is apparent and pressing.

Importantly, the incumbent LECs now are beginning to retire legacy copper loops and copper subloops at an overwhelming pace. For example, in February 2007, since the date of filing of the Petitions, Verizon posted eight-three (83) notifications of copper facilities that will be retired in the short term, as compared to a single notification posted by Verizon for all of the second half of 2006.⁵ Other carriers, such as BellSouth, have undertaken steady streams of copper loop and copper subloop retirements, averaging sixteen (16) such notifications per month, for 2006 (totaling nearly two hundred (200) notifications for all of 2006).⁶ Once legacy copper facilities are removed, destroyed or otherwise disabled, competitive LECs, consumers and business are forever deprived of the ability to use the discarded plant. Thus, the Commission must immediately act to curtail copper loop and copper subloop retirements by the incumbent LECs, until such time as it may properly assess the impact of such retirements on the public interest, through amendments to the existing Part 51 rules.

II. THE COMMISSION MUST EXPEDITIOUSLY IMPLEMENT RULES THAT SAFEGUARD ITS STATED PUBLIC INTEREST OBJECTIVES

The XO Petition convincingly demonstrates that the existing network disclosure requirements applicable to copper loop and copper subloop retirements fail to address the public interest harms that may result where the incumbent LECs unilaterally elect to

⁵ http://www22.verizon.com/regulatory/reg_ntw_dscl.html.

⁶ http://interconnection.bellsouth.com/alerts_and_notifications/network_disclosures/network_lett_07.html.

retire legacy copper facilities.⁷ Thus, the Part 51 rules must be amended to permit the Commission to fully review individual copper loop and copper subloop retirements, and to grant only those network modifications that affirmatively will serve the Commission's stated public interest objectives, including but not limited to the following: (1) promoting universal deployment of broadband services; (2) protecting national communications infrastructure for use during public safety and homeland security crises; and (3) ensuring robust network competition.⁸ In consideration of those objectives, the rule changes presented in the XO Petition appropriately establish a formal process for approval, by the Commission, on a case-by-case basis, of any incumbent LEC retirement of copper loops or copper subloops, subject to a presumption that such retirement does *not* serve the public interest.⁹

A. The Commission Must Honor its Commitment to Promote Universal Deployment of Broadband Services

Consistent with the mandate of Section 706 of the Act,¹⁰ the Commission repeatedly has stated its commitment to encouraging the provision of new technologies and services to the public, including broadband services. In recent statements before the Senate Committee on Commerce, Science and Transportation, individual Commissioners reinforced this important Commission objective.¹¹ In particular, Chairman Kevin Martin

⁷ XO Petition at 7-9.

⁸ *Id.*

⁹ *See id.* at 19-23 and Exhibit A.

¹⁰ *Id.* at 12-13.

¹¹ *See infra* n. 12 and 13. *See also* Testimony of FCC Commissioner Michael J. Copps, Hearing on Access to the Communications Marketplace, Committee on Commerce, Science and Transportation, U.S. Senate (Feb. 1, 2007) 1-2, at <http://www.fcc.gov/commissioners/copps/statements2007.html>; Statement of Commissioner Johnathan S. Adelstein, Federal Communications Commission, Before the Committee on Commerce, Science and Transportation, U.S. Senate (Feb.

declared that broadband deployment remains a top priority for the Commission,¹² and emphasized that:

[a]lmost all of today's innovation is enabled by broadband deployment. Broadband technology is the key driver of economic growth. The ability to share increasing amounts of information, at greater and greater speeds, increases productivity, facilitates commerce, and helps drive innovation.¹³

In the same regard, Commissioner Deborah Tate stated:

"broadband deployment is essential for the future of our country, not only for the communications industry, but also for every business in America and for our place as a global leader... Broadband promises unprecedented business, educational, and healthcare opportunities for all of us, no matter where we choose to live."¹⁴

Thus, the Commission must safeguard against copper loop and copper subloop retirements that may frustrate the ability of carriers to provide broadband services alternatives.

The retirement of copper loops and copper subloops used by competitive LECs to provide broadband service alternatives, including bundles of narrowband and broadband

1, 2007) 2 at <http://www.fcc.gov/commissioners/adelstein/statements2007.html>; Statement of Commissioner Robert M. McDowell, Federal Communications Commission, Before the Committee on Commerce, Science and Transportation, U.S. Senate (Feb. 1, 2007) at 3, at <http://www.fcc.gov/commissioners/mcdowell/statements2007.html>.

¹² Written Statement of the Honorable Kevin J. Martin, Chairman, Federal Communications Commission Before the Committee on Commerce, Science and Transportation, U.S. Senate (Feb. 1, 2007), at <http://www.fcc.gov/commissioners/martin/statements2007.html> ("Martin Statement") at 3, 6.

¹³ *Id.* at 3.

¹⁴ Written Statement of Deborah Taylor Tate, Commissioner, Federal Communications Commission on "Assessing the Communications Marketplace: A View From the FCC," Before the Committee on Commerce, Science and Transportation, U.S. Senate (Feb. 1, 2007), at <http://www.fcc.gov/commissioners/tate/statements2007.html> ("Tate Statement") at 4.

services, unquestionably would slow the budding progress of broadband penetration¹⁵ and the even more nascent development of competition within the market for broadband services, and thereby, would contradict the stated public interest objectives of the Commission. As discussed more fully in the XO Petition, recent technological innovations, including Ethernet over copper, render legacy copper facilities used by competitive LECs capable of providing services at multi-megabit speeds.¹⁶ Indeed, the legacy copper networks used by competitive LECs now may support a complete triple play of voice, data and video services comparable to those offered by the cable companies, over hybrid fiber-coax, or by the incumbent LECs, over FTTH and FTTC facilities.¹⁷ At bottom, the elimination of legacy copper facilities used by competitive LECs to provide broadband services ultimately would eliminate an important means of enhancing broadband adoption and competition, contrary to the Commission's objectives.

B. The Commission Must Protect Copper Telecommunications Infrastructure So that It Is Available During Public Safety Emergencies, Natural Disasters and Homeland Security Crises

The Commission previously has committed to ensure public safety during national public safety emergencies, including homeland security crises and natural disasters. Indeed, in consideration of the breakdown of communications systems during national public safety emergencies, including Hurricane Katrina, and the attacks of September 11, 2001, the Commission charged its newly-established Public Safety and Homeland Security Bureau with governing "all FCC activities pertaining to public safety, homeland security, national security, emergency management and preparedness, disaster

¹⁵ See Martin Statement at 4 (citing evidence of growth in broadband deployment).

¹⁶ XO Petition at 13-14.

¹⁷ *Id.*

management, and other related issues.”¹⁸ In recent remarks to the Senate Committee on Commerce, Science and Transportation, Chairman Martin reiterated that public safety remains a priority of the Commission, highlighting the following important Commission goals:

We must make sure that the public has the tools necessary to know when an emergency is coming and to contact first responders. And we must enable first responders to communicate with each other, and to rescue the endangered or injured. And the public and private sectors must work together so that our communications system can be repaired quickly in the wake of a disaster, so that affected people can reach out to locate or reassure one another.¹⁹

Thus, the Commission must ensure that all copper loop and copper subloops retirements are consistent with its objective, and do not jeopardize public safety or national security through the destruction of telecommunications networks. The retirement of copper loops and copper subloops by the incumbent LECs dismantle communications infrastructure that may be used in times of public safety emergencies, natural disasters and homeland security crises and therefore is inconsistent with the Commission’s objective.

Moreover, the legacy line-powered copper networks that are dismantled or destroyed through routine incumbent LEC retirements are inherently superior to fiber facilities for purposes of maintaining communications during public safety emergencies, including natural disasters and homeland security crises. Specifically, the services offered by fiber-based providers, including cable companies, are more vulnerable to

¹⁸ <http://www.fcc.gov/pshs>; *see also*, Martin Statement at 9.

¹⁹ Martin Statement at 9; *see also* News Release, Federal Communications Commission, Chairman Kevin J. Martin Announces His Intention to Appoint Derek Poarch Public Safety and Homeland Security Bureau Chief (rel. Feb. 23, 2007) (Martin stated “[p]ublic safety and is one of the Commission’s and my top priorities”).

outages during loss of power because fiber cannot be line-powered and cannot be fully supported by end office back-up generator equipment, as copper loop plant can. Indeed, Verizon discloses to its FiOS customers that “911 service (except through VoIP)” is only available to the extent there is life on a back-up battery that the *customer* is responsible for replacing.²⁰ By contrast, Verizon’s recent “It’s On” advertising campaign boasts that voice services provided over Verizon’s “custom-built network,” by design, are more reliable than competing services provided over fiber networks, through cable phone or VoIP offerings.²¹ Therefore, incumbent LEC retirement of copper loops and copper subloops would eliminate those telecommunications facilities that are most likely to operate effectively during public safety emergencies, including natural disasters and homeland security crises.

Systematic retirement of copper loops and copper subloops by the incumbent LECs eliminates redundant networks that may prove critical during, or immediately following a national emergency, in times where other telecommunications systems fail. The significant role of redundant communications networks was recognized in the recent remarks of Commissioner Tate on public safety and homeland security, before the Senate Committee on Commerce, Science and Transportation,²² and already is the subject of a

²⁰ XO Petition at 15 and n.5.

²¹ Verizon Beams Quality Message to Customer Living Rooms, New Release at <http://newscenter.verizon.com/press-releases/verizon/2007/verizon-beams-quality-message.html> (Feb. 8, 2007); *see also* Todd Wasserman, Verizon Fights Back Against Cable, AdWeek at http://www.adweek.com/aw/national/article_display.jsp?vnu_content_id=1003544083 (“Last year, AT&T also ran ads touting its networks’ always-on service.”).

²² Tate Statement at 6.

federal regulation addressing emergency preparedness for telecommunications services.²³ Thus, the Commission must consider whether the incumbent LECs' decision to dismantle or destroy copper facilities, including copper loops and copper subloops, would endanger public safety by disabling redundant communications networks that may prove essential to ensuring communications during public safety emergencies.

C. The Commission Must Preserve Network Competition Over Copper Facilities

Consistent with Section 251 and 252 of the Act,²⁴ and the federal unbundling rules,²⁵ the Commission must take affirmative steps to promote competition in areas where the ability competitive LECs to provide telecommunications services is impaired without the use of unbundled network elements ("UNEs"), including copper loops and copper subloops provisioned by the incumbent LECs. As directed by Congress, the Commission has implemented thresholds to determine where incumbent LEC unbundling obligations, under Section 251(c)(3), remain in place, and the incumbent LECs must unbundle copper loop and copper subloop elements where such obligations exist.²⁶ However, to the extent that legacy copper facilities are retired by the incumbent LECs, consistent with the existing Part 51 rules, such unbundling obligations are relieved.

The retirement of copper loops and copper subloops by the incumbent LECs, pursuant to the existing Part 51 rules, effectively denies competitive LECs

²³ Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 414, (2005); Memorandum from Joshua B. Bolten, Director, OMB, Regulation on Maintaining Telecommunication Services During a Crisis or Emergency in Federally-owned Buildings (Jun. 30, 2006), appended as Exhibit C to the XO Petition; *see also* XO Petition at 15-16.

²⁴ 47 U.S.C. §§ 251, 252.

²⁵ 47 C.F.R. Part 51.

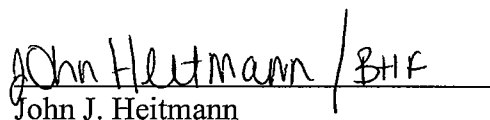
²⁶ *See* 47 C.F.R. § 51.319(a).

nondiscriminatory access to facilities that enable competitive service offerings, subject to TELRIC pricing, and the regulatory protections of Section 251 (c)(3) of the Act.²⁷ As discussed more fully in the XO Petition, such facilities are critical to the development of facilities-based network competition. Moreover, the alternative, narrowband transmission path over fiber facilities, as offered pursuant to the federal unbundling rules, do not permit competitive LECs to offer a full array of services, to innovate, or to compete with current incumbent LEC service offerings.²⁸ At bottom, the elimination of legacy copper facilities used by competitive LECs to provide services ultimately would eliminate an important source of network competition, contrary to the Commission's objectives.

III. CONCLUSION

For the reasons set forth here, the Joint Commenters respectfully request that the Commission immediately act to: (1) grant the Petitions; (2) issue a Notice of Proposed Rulemaking, adopting as tentative conclusions the changes to the existing Part 51 rules proposed in the XO Petition; and (3) expeditiously complete a rulemaking proceeding to amend certain provisions of the Part 51 rules applicable to retirement of copper loops and copper subloops by the incumbent LECs, in the manner recommended by the XO Petition.

Respectfully submitted,


John J. Heitmann

²⁷ The Commission long has maintained that promotion of facilities-based competition, investment and innovation serves the overall goals of the 1996 Act. *Triennial Review Order*, ¶¶ 22, 70.

²⁸ XO Petition at 10.

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